

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Dunn Analyst: Marion Mann DeJong Bill Number: SB 1724

Related Bills: See Prior Analysis Telephone: 845-6979 Amended Date: 07/03/2000

Attorney: Patrick Kusiak Sponsor:

SUBJECT: Prohibit Disclosure of Return Information by Preparers & Businesses/ FTB Prohibited from Approving Electronic Filing if Taxpayer Must Waive Privacy

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

☒ DEPARTMENT POSITION CHANGED TO Board Support.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED _____ STILL APPLIES.

OTHER - See comments below.

SUMMARY OF BILL

Under the Revenue and Taxation Code (R&TC), this bill would prohibit the Franchise Tax Board (FTB) from approving electronic filing software or electronic tax forms that require taxpayers to waive privacy protections or require the sharing of information as a condition of access.

Under the Business and Professions Code (B&PC), this bill would:

- ?? Expand criminal sanctions for disclosures of tax return information by businesses that prepare returns by adding disclosures made either within the tax-preparing firm or to subsidiaries or affiliates of the tax-preparing firm.
- ?? Add filing an income tax return electronically to the list of activities that defines persons engaged in the business of preparing tax returns or assisting in the preparation of tax returns.
- ?? Allow the written consent for disclosure to be done electronically with an electronic signature.
- ?? Modify the definition of "tax preparers" to include persons who, for consideration other than a fee, prepare tax returns for another person.
- ?? Make each violation of the criminal provisions regulating the practice of tax preparers a separate offense.
- ?? Specify that tax return information includes information obtained through an electronic medium.
- ?? Require the disposal of tax return information in a manner that protects the identity of the taxpayers.

Board Position:

<input checked="" type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input type="checkbox"/> PENDING

Legislative Director

Date

Johnnie Lou Rosas

7/18/00

Under the Civil Code, this bill would establish a civil penalty for disclosure of tax return information provided by a consumer in connection with financial or business-related transactions. This consumer protection penalty would be based on the taxpayer protection penalty under the B&PC.

The B&PC and Civil Code provisions do not directly impact the programs administered by FTB.

SUMMARY OF AMENDMENT

The July 3, 2000, amendments added the R&TC provision discussed in this analysis, added a provision to allow an electronic signature on a consent to disclose, specified methods for disposal of return information, and added specified transactions for which disclosure is permitted.

The "Effective Date," "Background" and "Specific Findings" from the department's analysis of the bill as introduced February 23, 2000, still apply. An analysis is provided below for the R&TC provision. In addition, the discussion of the B&PC and Civil Code provisions from the prior analyses has been updated to reflect the July 3, 2000, amendments and is provided. The board position has been changed to reflect action taken at the most recent Franchise Tax Board meeting.

SPECIFIC FINDINGS

Currently, the R&TC requires any return, declarations, statements or other documents filed with FTB using electronic technology to be in the form prescribed by the department.

Taxpayer Protection

Under the R&TC, this bill would prohibit FTB from approving for electronic filing to its designated portal any filing software or electronic tax forms that require taxpayers to waive privacy protections or require the sharing of information as a condition of access to that software or those forms. **The bill** states that it is the intent of the Legislature that FTB only accept electronic filing that contains privacy protections equal to those with which the department is required to comply.

Under the B&PC, this bill would expand criminal sanctions for disclosure of tax return information by businesses that prepare returns by adding disclosures made either within the tax-preparing firm or between subsidiaries or affiliates of the tax-preparing firm. "Affiliate" would mean any entity that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, another entity.

This bill would add "filing a state or federal income tax return by electronic transmittal of return data directly to the Franchise Tax Board or the Internal Revenue Service" to the list of activities that defines persons engaged in the business of preparing tax returns or assisting in the preparation of tax returns.

This bill would specify that tax return information includes information obtained through an electronic medium.

This bill would allow the written consent for disclosure to be done electronically with an electronic signature.

This bill would require persons to dispose of tax return information in such a manner (e.g., burning or shredding) that the disposed of information, alone or in combination with other publicly available information, could not be used to identify the taxpayer. Violation of this provision would constitute a misdemeanor.

For purposes of the chapter in the B&PC that regulates the practice of tax preparers, **this bill** would modify the definition of "tax preparers" to include persons who, for consideration other than a fee, prepare tax returns for another person.

This bill also would make each violation of provisions regulating the practice of tax preparers a separate offense.

Consumer Protection

Under the Civil Code, this bill would establish civil penalties for most disclosures of tax return information, similar to the penalties provided in the B&PC discussed above. Protected information would include information obtained through an electronic medium or information provided by a consumer in connection with financial or business-related transactions. Disclosure would continue to be permitted where the disclosure is:

- ?? authorized by written (either paper or electronically with electronic signature) consent of the consumer in a separate document that states who the information will be disclosed to and how that person will use the information;
- ?? authorized expressly by law;
- ?? necessary to complete or service the financial or business-related transaction or to effect, administer or enforce a financial or business-related transaction requested by the customer;
- ?? pursuant to a court order; or
- ?? required to complete any of the following transactions if the disclosure is solely for that purpose:
 1. A proposed or actual sale, merger, transfer or exchange of all or a portion of a business or operating unit;
 2. A proposed or actual securitization or secondary market sale, including the sale of servicing rights;
 3. To provide information to insurance rate advisory organizations, guaranty funds or agencies, rating agencies and other persons assessing compliance with industry standards;
 4. To protect against or to prevent actual or potential fraud and unauthorized transactions and claims and for institutional risk control activities.

A prohibited disclosure would include disclosures made internally within the entity conducting financial or business-related transactions with the consumer or by that entity to any of its subsidiaries or affiliates (defined as it is in the B&PC).

Unrelated use of tax information without the consumer's consent would also be prohibited. "Unrelated use" would mean any use that is not necessary to effect, administer or enforce the financial or other business-related transaction with the consumer.

Civil penalties would be imposed if tax return information obtained in connection with financial or business-related transactions was not disposed of in a manner that protects the identity of the consumer. Penalties would be imposed if the disposed of information, alone or in combination with other publicly available information, could identify the consumer.

Each violation of these provisions would be a separate cause of action for which damages could be recoverable.

Policy Considerations

This bill would provide additional protection to taxpayers from unauthorized disclosure and careless disposal of tax return information. The added protection would cover businesses that prepare and electronically file tax returns and should reduce taxpayers' fears regarding electronic filing. Taxpayer confidence in the security of electronic filing is needed to accomplish the department's goal of a paperless filing system.

Implementation Considerations

Implementing this bill would not significantly impact the department's programs and operations. In fact, implementing this bill may foster greater acceptance of paperless, electronic filing methods.

Technical Considerations

As requested by the sponsor, Amendment 1 would clarify that all electronic filing, not just filing thorough the department's portal, would be prohibited from requiring the taxpayer to waive any privacy protections or share information.

FISCAL IMPACT

Departmental Costs

This bill would not impact the department's costs.

Tax Revenue Estimate

This bill would not impact the state's income tax revenue.

BOARD POSITION

Support.

At its July 5, 2000, meeting, the Franchise Tax Board voted 2-0 to support this bill, with member B. Timothy Gage abstaining.

Analyst	Marion Mann DeJong
Telephone #	845-6979
Attorney	Patrick Kusiak

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 1724
As Amended July 3, 2000

AMENDMENT 1

On page 9, modify lines 29 and 30 as follows:

for electronic filing ~~to its designated portal for receiving electronic returns,~~
any proprietary filing software or